

REMARKS

The applicant appreciates the Examiner's thorough examination of the application and requests reexamination and reconsideration of the application in view of the preceding amendments and the following remarks. The applicant also appreciates the Examiner's indication that claims 14-15, 17-20, 34-40, 42 and 45-47 are allowed and claims 3, 6, 8-9, 12-13, 23, 26, 28-29 and 32-33 are allowable.

The Examiner rejects claims 1, 2, 4-5, 7, 10-11, 21-22, 24-25, 27, 30-31 and 43-44 under 35 USC §103(a) as being unpatentable over U.S. Patent No. 5,741,260 to Songer et al. in view of U.S. Patent No. 5,476,465 to Preissman.

Claim 1 of the subject application is directed to a crimping system. A crimp tube has an aperture formed along a long axis of the crimp tube for a suture to be located within the aperture of the crimp tube. A set of crimp devices are provided for attachment to first and second portions of the suture. Claim 1 also recites a unique crimping tool. Two arms each have a proximal end and a distal end, the proximal end comprising a handle and the distal end comprising a jaw. A first crimping member is integral with the first jaw and has a first inner surface width. A second crimping member is integral with the second jaw and has a second inner surface width.

The Examiner alleges that:

Songer discloses a crimp tube 36 crimped by a crimping tool having jaws, handles and crimping members with gaps therebetween when closed. A tensioner holds tension on a suture crimped into the lumen of the tube. Two crimp tubes are shown, one being the claimed crimp tube and the other being one of the set of crimp devices. However a plurality of crimp devices are not disclosed.

It would have been obvious to have provided a set with more than two crimp tubes as it is nothing more than an obvious duplication of known parts, and would allow for the placement of a multitude of

crimp tubes along the sternum.

In operation of the Songer system, end portions 32a, 34a of cable 42 extend within crimp 36 and along pliers handle 12 to capstan member 44. Both end portions 32a, 34a are tightened about the drums of the capstan. Then, pliers 10 are activated to crush crimp 36, and end portions 32a, 34a outside of crimp 36 may be cut and removed. See Col. 3, line 56-

The applicant submits that Songer teaches away from providing a set of crimp devices for attachment to first and second portions of the suture to place the suture in tension as claimed by the applicant.

The Examiner alleges that it would have been obvious to have provided a “kit” with multiple cables and crimp tubes in order to perform a complete procedure where multiple cables are needed. The Examiner further alleges that once multiple cables and crimp tubes are placed in the “kit”, one or two of the tubes could be the claimed crimp tubes and others could be the claimed crimp devices.

However, the applicant submits that Songer does not disclose, teach or suggest providing any such “kit”. Songer discloses one crimp tube used in conjunction with a single cable. Nowhere does Songer disclose, teach or suggest that multiple cables and tubes are packaged together and sold as a “kit”.

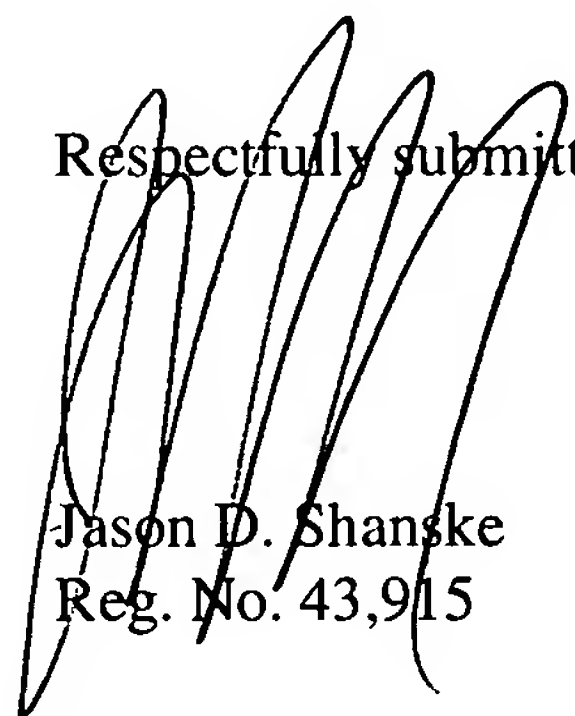
The Examiner appears to rely on Fig. 8 of Songer which shows two cables being used during a surgical procedure to support the proposition that it would be obvious to package such cables and tubes in a “kit”. However, Fig. 8 of Songer only discloses two cables, and one crimp tube associated with each cable. Even if the two cables and crimp tubes were packaged in a “kit” as suggested by the Examiner, the kit would still fail to include a set of crimp devices as claimed by the applicant. Such a “kit” would only include two crimp tubes, while the claimed invention

requires three such tubes. Therefore, such a "kit" would fail to include all of the elements of the applicant's claimed invention.

Accordingly, the applicant submits the claims of the subject patent application are patentable over Songer for this additional reason.

If for any reason these Preliminary Remarks are found to be incomplete, or if at any time it appears that a telephone conference with counsel would help advance prosecution, please telephone the undersigned or his associates collect in Waltham, Massachusetts at (781) 890-5678.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jason D. Shanske", is written over the typed name and registration number.

Jason D. Shanske
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